

## INTERNATIONAL MARITIME CONVENTIONS

### OVERVIEW

International conventions are treaties or agreements between countries. "International convention" is often used interchangeably with terms like "international treaty," "international agreement," "compact," or "contract between states."

Conventions may be of a general or specific nature and between two or multiple states. Conventions between two states are called bilateral treaties; conventions between a small number of states (and more than two) are called plurilateral treaties; conventions between many states are called multilateral treaties. *Source; Wikipedia.*

There are several International Maritime Conventions used globally. The main ones include;

- i. Safety of Life at Sea (**SOLAS**)
- ii. International Convention for the Prevention of Pollution from Ships (**MARPOL**)
- iii. The International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (**STCW**)
- iv. Hague-Visby Rules
- v. The Hamburg Rules

#### **i. SOLAS**

- ❖ The International Convention for the **Safety of Life at Sea**, popularly known as **SOLAS**, is basically a **maritime safety treaty** for shipping nations. **SOLAS** was adopted way back in 1914, in response to the famous Titanic disaster in April 1912. It suggested the minimum number of lifeboats and other emergency equipment required to be maintained by merchant ships. The second and third versions of the treaty were introduced in 1929 and 1948 respectively.
- ❖ When the **International Maritime Organization (IMO)** was established in 1958, it adopted a new version of **SOLAS** in 1960 with the intention to keep the convention up to date by periodic amendments. But the amendment procedures appeared to be very slow taking several years due to delay in ratification by shipping nations. As a result, **IMO** introduced a new version of **SOLAS** in 1974 to include the tacit acceptance procedure - which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties. The new procedure has led to numerous amendments in **SOLAS** since 1974. The Convention in force today is often referred to as **SOLAS, 1974, as amended**.
- ❖ After numerous amendments, the current version of the **SOLAS Convention** mainly deals with fixing minimum standards for the construction, equipment, and operation of ships, compatible with their safety. It also suggests the Flag States ensure that marine vessels under their flag comply with minimum safety standards in construction, equipment, and operation. The **SOLAS Convention** is divided into 12 chapters that cover general obligations, amendment procedures, and other important areas of the treaty. Several nations have

integrated important provisions of these international regulations into their national laws so that legal proceedings can be started against rule-breaking shipping companies.

## Chapters of the Treaty

### Chapter I - General Provisions

- ❖ Includes regulations concerning the **survey** of the various types of ships and the issuing of **documents** signifying that the ship meets the requirements of the Convention. The Chapter also includes provisions for the **control of ships in ports** of other Contracting Governments.

### Chapter II-1 - Construction - Subdivision and stability, machinery, and electrical installations

- ❖ The subdivision of passenger ships into **watertight compartments** must be such that after assumed damage to the ship's hull the vessel will remain afloat and stable. Requirements for watertight integrity and bilge pumping arrangements for passenger ships are also laid down as well as stability requirements for both passenger and cargo ships.
- ❖ The degree of subdivision - measured by the maximum permissible distance between two adjacent bulkheads - varies with the ship's length and the service in which it is engaged. The highest degree of subdivision applies to passenger ships.
- ❖ Requirements covering machinery and electrical installations are designed to ensure that services that are essential for the safety of the ship, passengers, and crew are maintained under various emergency conditions.
- ❖ "Goal-based standards" for oil tankers and bulk carriers were adopted in 2010, requiring new ships to be designed and constructed for a specified design life and to be safe and environmentally friendly, in intact and specified damage conditions, throughout their life. Under the regulation, ships should have adequate strength, integrity, and stability to minimize the risk of loss of the ship or pollution to the marine environment due to structural failure, including collapse, resulting in flooding or loss of watertight integrity.

### Chapter II-2 - Fire protection, fire detection, and fire extinction

- ❖ Includes detailed **fire safety provisions** for all ships and specific measures for passenger ships, cargo ships, and tankers.
- ❖ They include the following principles: division of the ship into main and vertical zones by thermal and structural boundaries; separation of accommodation spaces from the remainder of the ship by thermal and structural boundaries; restricted use of combustible materials; detection of any fire in the zone of origin; containment and extinction of any fire in the space of origin; protection of the means of escape or of access for fire-fighting purposes; ready availability of fire-extinguishing appliances; minimization of the possibility of ignition of flammable cargo vapor.

### Chapter III - Life-saving appliances and arrangements

- ❖ The Chapter includes requirements for **life-saving appliances** and **arrangements**, including requirements for **lifeboats**, **rescue boats**, and **life jackets** according to the type of ship. The International Life-Saving Appliance (LSA) Code gives specific technical requirements for LSAs and is mandatory under Regulation 34, which states that all life-saving appliances and arrangements shall comply with the applicable requirements of the LSA Code.

### Chapter IV - Radio communications

- ❖ The Chapter incorporates the **Global Maritime Distress and Safety System (GMDSS)**. All passenger ships and all cargo ships of 300 gross tonnage and upwards on international voyages are required to carry equipment designed to improve the chances of rescue following an accident, including satellite emergency position indicating radio beacons (EPIRBs) and search and rescue transponders (SARTs) for the location of the ship or survival craft.
- ❖ Regulations in Chapter IV cover undertakings by contracting governments to provide radio communication services as well as ship requirements for the carriage of radio communications equipment. The Chapter is closely linked to the Radio Regulations of the International Telecommunication Union.

### Chapter V - Safety of navigation

- ❖ This chapter identifies certain **navigation safety services** which should be provided by Contracting Governments and sets forth provisions of an operational nature applicable in general to all ships on all voyages. This is in contrast to the Convention as a whole, which only applies to certain classes of ships engaged on international voyages.
- ❖ The subjects covered include the maintenance of meteorological services for ships; the ice patrol service; the routing of ships; and the maintenance of search and rescue services.
- ❖ This Chapter also includes a general obligation for masters to proceed to the assistance of those in distress and for Contracting Governments to ensure that all ships shall be sufficiently and efficiently manned from a safety point of view.
- ❖ The chapter makes mandatory the carriage of **voyage data recorders (VDRs)** and **automatic ship identification systems (AIS)**.

### Chapter VI - Carriage of Cargoes

- ❖ The Chapter covers all types of cargo (except liquids and gases in bulk) "which, owing to their particular hazards to ships or persons on board, may require special precautions". The regulations include requirements for stowage and securing of cargo or cargo units (such as containers). The Chapter requires cargo ships carrying grain to comply with the International Grain Code.

## Chapter VII - Carriage of dangerous goods

- ❖ **The regulations are contained in three parts:**

**Part A** - Carriage of dangerous goods in packaged form - includes provisions for the classification, packing, marking, labeling and placarding, documentation, and stowage of dangerous goods. Contracting Governments are required to issue instructions at the national level and the Chapter makes mandatory the International Maritime Dangerous Goods (IMDG) Code, developed by IMO, which is constantly updated to accommodate new dangerous goods and to supplement or revise existing provisions.

- ❖ **Part A-1** - Carriage of dangerous goods in solid form in bulk - covers the documentation, stowage, and segregation requirements for these goods and requires reporting of incidents involving such goods.
- ❖ **Part B** covers the Construction and equipment of ships carrying dangerous liquid chemicals in bulk and requires chemical tankers to comply with the International Bulk Chemical Code (IBC Code).
- ❖ **Part C** covers the Construction and equipment of ships carrying liquefied gases in bulk and gas carriers to comply with the requirements of the International Gas Carrier Code (IGC Code).
- ❖ **Part D** includes special requirements for the carriage of packaged irradiated nuclear fuel, plutonium, and high-level radioactive wastes on board ships and requires ships carrying such products to comply with the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium, and High-Level Radioactive Wastes on Board Ships (INF Code).
- ❖ The chapter requires the carriage of dangerous goods to be in compliance with the relevant provisions of the International Maritime Dangerous Goods Code (IMDG Code).

## Chapter VIII - Nuclear ships

- ❖ Gives basic requirements for **nuclear-powered ships** and is particularly concerned with radiation hazards. It refers to the detailed and comprehensive Code of Safety for Nuclear Merchant Ships which was adopted by the IMO Assembly in 1981.

## Chapter IX - Management for the Safe Operation of Ships

- ❖ The Chapter makes mandatory the **International Safety Management (ISM) Code**, which requires a safety management system to be established by the ship-owner or any person who has assumed responsibility for the ship (the "Company").

## Chapter X - Safety measures for high-speed craft

- ❖ The Chapter makes mandatory the **International Code of Safety for High-Speed Craft (HSC Code)**.

## Chapter XI-1 - Special measures to enhance maritime safety

- ❖ The Chapter clarifies requirements relating to authorization of recognized organizations (responsible for carrying out surveys and inspections on Administrations' behalves); enhanced surveys; ship identification number scheme; and port State control on operational requirements.

## Chapter XI-2 - Special measures to enhance maritime security

- ❖ **Regulation XI-2/3** of the chapter enshrines the **International Ship and Port Facilities Security Code (ISPS Code)**. *Part A* of the Code is mandatory and *part B* contains guidance as to how best to comply with the mandatory requirements. Regulation XI-2/8 confirms the role of the Master in exercising his professional judgment over decisions necessary to maintain the security of the ship. It says he shall not be constrained by the Company, the charterer, or any other person in this respect.

**Regulation XI-2/5** requires all ships to be provided with a ship security alert system. , Regulation XI-2/6 covers requirements for port facilities, providing among other things for Contracting Governments to ensure that port facility security assessments are carried out and that port facility security plans are developed, implemented, and reviewed in accordance with the ISPS Code. Other regulations in this chapter cover the provision of information to IMO, the control of ships in port, (including measures such as the delay, detention, restriction of operations including movement within the port, or expulsion of a ship from the port), and the specific responsibility of Companies.

## Chapter XII - Additional safety measures for bulk carriers

- ❖ The Chapter includes **structural requirements for bulk carriers** over 150 meters in length.

ii. **THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS (MARPOL)**

- ❖ The **International Convention for the Prevention of Pollution from Ships (MARPOL)** is the most important international regulation for preventing pollution of the marine environment by oil tankers due to accidental or operational causes. **MARPOL** was adopted by **IMO** in 1973, which incorporated much of the provisions of **OILPOL 1954** and its amendments into Annex I. Annex I made several improvements in **OILPOL**. It suggested requirements for regular monitoring of oil discharges into seawater and made Governments responsible to provide shore reception and treatment facilities at oil terminals and ports. Other five annexes of **MARPOL** cover **chemicals, harmful substance packages, sewage, garbage, and air pollution** in their respective spheres.
- ❖ **Annex I** of the Convention contains the most important regulations for preventing pollution by oil from shipping vessels. As **MARPOL 73** was under the process of implementation, a series of tanker accidents occurred in 1976-77, leading to the formulation of the 1978 **MARPOL Protocol** that fully absorbed the 1973 Convention. The combined version, referred to as (MARPOL 73/78), was finally implemented in October 1983. In 1997, a new Protocol was adopted by IMO to amend and add a new **Annex VI** in the Convention, which was finally implemented in May 2005.
- ❖ In July 2011, IMO introduced new amendments to **Annex V** that prohibit the discharge of all garbage into the sea, except as provided otherwise, under specific circumstances. IMO also included new measures in **Annex VI** to significantly reduce the greenhouse gas emission from [merchant ships](#). The amended version of Annex V and VI came into force on January 01, 2013. At present, 136 nations representing 98% of global shipping tonnage are signatories to the **MARPOL Convention**.

**Annexes of MARPOL Convention:**

**Annex I Regulations for the Prevention of Pollution by Oil (entered into force 2 October 1983)**

- ❖ Covers **prevention of pollution by oil** from operational measures as well as from accidental discharges; the 1992 amendments to Annex I made it mandatory for new oil tankers to have double hulls and brought in a phase-in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003.

**Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk (entered into force 2 October 1983)**

- ❖ Details the **discharge criteria and measures** for the control of **pollution by noxious liquid substances** carried in bulk; some 250 substances were evaluated and included in the list appended to the Convention; the discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with. In any case, no discharge of residues containing noxious substances is permitted within **12 nautical miles** of the nearest land.

**Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form (entered into force 1 July 1992)**

- ❖ Contains **general requirements** for the issuing of detailed standards on **packing, marking, labeling, documentation, stowage, quantity limitations, exceptions, and notifications.**
- ❖ For the purpose of this Annex, **“harmful substances”** are those substances that are identified as marine pollutants in the **International Maritime Dangerous Goods Code (IMDG Code)** or which meet the criteria in the Appendix of Annex III.
- ❖ **Annex IV Prevention of Pollution by Sewage from Ships (entered into force 27 September 2003)**

Contains requirements to **control pollution of the sea by sewage**; the discharge of sewage into the sea is prohibited, except when the ship has in operation an approved sewage treatment plant or when the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land; sewage which is not comminuted or disinfected has to be discharged at a distance of more than 12 nautical miles from the nearest land.

In July 2011, IMO adopted the most recent amendments to MARPOL Annex IV which entered into force on 1 January 2013. The amendments introduce the Baltic Sea as a special area under Annex IV and add new discharge requirements for passenger ships while in a special area.

**Annex V Prevention of Pollution by Garbage from Ships (entered into force 31 December 1988)**

- ❖ Deals with different types of **garbage** and specifies the distances from land and the manner in which they may be disposed of; the most important feature of the Annex is the complete ban imposed on the disposal into the sea of all forms of plastics.
- ❖ In July 2011, IMO adopted extensive amendments to Annex V which entered into force on 1 January 2013. The revised Annex V prohibits the discharge of all garbage into the sea, except as provided otherwise, under specific circumstances.

**Annex VI Prevention of Air Pollution from Ships (entered into force 19 May 2005)**

- ❖ Sets **limits on Sulphur oxide and nitrogen oxide emissions** from ship exhausts and prohibits deliberate emissions of ozone-depleting substances; designated emission control areas set more stringent standards for SO<sub>x</sub>, NO<sub>x</sub>, and particulate matter.

iii. **THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION, AND WATCHKEEPING FOR SEAFARERS (STCW)**

- ❖ The **STCW** was adopted by **IMO** on July 07, 1978, in London. As the name suggests, the **Convention** has been created to set minimum training, certification, and watchkeeping standards for masters and officers which countries are obliged to meet or exceed.
- ❖ The **Convention** came into effect in 1984 after the ratification by a pre-requisite number of countries. The **STCW Convention** was the first major initiative to set minimum requirements on training, certification, and watchkeeping for seafarers on an international level.
- ❖ Prior to this, these standards and ratings were set by individual nations ignoring the existing practices in other countries. That resulted in wide variations in standards of training and certification of mariners, and thus **STCW** came into force to deal with this problem. By 2011, there were 155 signatories to the **STCW Convention**, which represents 98.9 % of global shipping tonnage.
- ❖ **IMO** made major amendments to **STCW Convention** in 1995 at the behest of the **US Coast Guard**. These amendments didn't require ratification by signatory nations like the original convention. However, **STCW 95** amendments completely rewrote enforcement procedures related to the **Convention**.
- ❖ They led to the division of technical annexes into regulations and the creation of an **STCW Code**, which sets stringent standards for mariners to meet. **Part A** of the **STCW Code** is made mandatory while **Part B** is recommended. Another major change was the requirement for signatories to provide detailed information to **IMO** regarding administrative measures taken to ensure compliance with the **Convention**. Earlier **IMO** was not directly involved in areas related to compliance and implementation, and it was the responsibility of flag States to ensure compliance. These amendments came into force on February 1, 1997.
- ❖ Other major amendments (known as **Manila amendments**) to the **STCW Conventions** were adopted in June 2010 that made significant changes in the existing **Convention** and **Code**. Aimed at making the Convention and Code up to date to address new issues in this area, these amendments entered into force on January 01, 2012, under the tacit acceptance procedure.



## STCW Convention chapters

### Chapter I - General Provisions

They include the following:

- ❖ ***Ensuring compliance with the Convention***  
Parties to the Convention are required to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the **Convention**. This represented the first time that IMO had been called upon to act in relation to compliance and implementation - generally, implementation is down to the flag States, while port State control also acts to ensure compliance.
- ❖ Under Chapter, I, regulation I/7 of the revised **Convention**, Parties are required to provide detailed information to IMO concerning administrative measures taken to ensure compliance with the **Convention**, education and training courses, certification procedures, and other factors relevant to implementation.
- ❖ **By 1 August 1998** - the deadline for submission of information established in section A-I/7 of the STCW Code - 82 out of the 133 STCW Parties had communicated information on compliance with the requirements of the revised Convention. The 82 Parties which met the deadline represent well over 90% of the world's ships and seafarers.
- ❖ The information is reviewed by panels of competent persons, nominated by Parties to the STCW Convention, who report on their findings to the IMO Secretary-General, who, in turn, reports to the Maritime Safety Committee (MSC) on the Parties which fully comply. The MSC then produces a list of Parties in compliance with the 1995 amendments.
- ❖ The first list of countries was approved by the MSC at its 73rd session held from 27 November to 6 December 2000 – it included 71 countries and one Associate Member of IMO.

### Port State control

- ❖ The revised Chapter I includes enhanced procedures concerning the exercise of port State to allow intervention in the case of deficiencies deemed to pose a danger to persons, property or the environment (regulation I/4). This can take place if certificates are not in order or if the ship is involved in a collision or grounding, if there is an illegal discharge of substances (causing pollution) or if the ship is maneuvered in an erratic or unsafe manner, etc.

### ***Other regulations in chapter I include:***

#### **Measures are introduced for watchkeeping personnel to prevent fatigue.**

- ❖ Parties are required to establish procedures for investigating acts by persons to whom they have issued certificates that endanger the safety of the environment. Penalties and other disciplinary measures must be prescribed and enforced where the Convention is not complied with.

- ❖ Technical innovations, such as the use of simulators for training and assessment purposes have been recognized. Simulators are mandatory for training in the use of radar and automatic radar plotting aids (regulation I/12 and section A-I/12 of the STCW Code).
- ❖ Parties are required to ensure that training, certification, and other procedures are continuously monitored by means of a quality standards system (regulation I/8).
- ❖ Every master, officer, and radio operator is required at intervals not exceeding five years to meet the fitness standards and the levels of professional competence contained in Section A-I/11 of the STCW Code.
- ❖ In order to assess the need for revalidation of certificates after 1 February 2002, Parties must compare the standards of competence previously required with those specified in the appropriate certificate in part A of the STCW Code. If necessary, the holders of certificates may be required to undergo training or refresher courses (regulation I/11).

## **Chapter II: Master and deck department**

- ❖ The Chapter was revised and updated.

## **Chapter III: Engine department**

- ❖ The Chapter was revised and updated.

## **Chapter IV: Radio communication and radio personnel**

- ❖ The Chapter was revised and updated.

## **Chapter V: Special training requirements for personnel on certain types of ships**

- ❖ Special requirements were introduced concerning the training and qualifications of personnel on board **ro-ro passenger ships**. Previously the only special requirements in the **Convention** concerned crews on tankers.
- ❖ This change was made in response to proposals made by the **Panel of Experts** set up to look into ro-ro safety following the capsizing and sinking of the ferry Estonia in September 1994. Crews on ro-ro ferries have to receive training in technical aspects and also in-crowd and crisis management and human behavior.

## **Chapter VI: Emergency, occupational safety, medical care, and survival functions**

- ❖ The **Chapter** incorporates the previous **Chapter VI: Proficiency in survival craft** and includes mandatory minimum requirements for familiarization, basic safety training and instruction for all seafarers; mandatory minimum requirements for the issue of certificates of proficiency in survival craft, rescue boats, and fast rescue boats; mandatory minimum requirements for training in advanced firefighting; and mandatory minimum requirements relating to medical first aid and medical care.

## **Chapter VII: Alternative certification**

- ❖ **Regulations regarding alternative certification** (also known as the functional approach) are included in a new **Chapter VII**. This involves enabling crews to gain training and certification in various departments of seafaring rather than being confined to one branch (such as a deck or engine room) for their entire career. Although it is a relatively new concept, the 1995 Conference was anxious not to prevent its development. At the same time, the new Chapter is intended to ensure that safety and the environment are not threatened in any way. The use of equivalent education and training arrangements is permitted under article IX.

## **Chapter VIII: Watchkeeping**

- ❖ Measures were introduced for watchkeeping personnel to prevent fatigue. Administrations are required to establish and enforce rest periods for watchkeeping personnel and to ensure that watch system are so arranged that the efficiency of watchkeeping personnel is not impaired by fatigue.

## **The STCW Code**

- ❖ The regulations contained in the Convention are supported by sections in the STCW Code. Generally speaking, the Convention contains basic requirements which are then enlarged upon and explained in the Code.
- ❖ Part A of the Code is mandatory. The minimum standards of competence required for seagoing personnel are given in detail in a series of tables. Chapter II of the Code, for example, deals with standards regarding the master and deck department.
- ❖ Part B of the Code contains recommended guidance that is intended to help Parties implement the Convention. The measures suggested are not mandatory and the examples given are only intended to illustrate how certain Convention requirements may be complied with. However, the recommendations, in general, represent an approach that has been harmonized by discussions within IMO and consultation with other international organizations.

iv. **HAGUE-VISBY RULES**

- ❖ The **Hague Rules** are a set of rules governing the international carriage of goods by [merchant ships](#), drafted at the **International Convention** in Brussels in 1924. The official title of the Convention was "**International Convention for the Unification of Certain Rules of Law relating to Bills of Lading**". These rules were created as a result of growing dissatisfaction among shippers and their insurers due to arbitrary restrictions imposed by carriers to limit their liability in case of damage or loss of cargo.
- ❖ The **Hague rules** were the first practical efforts made to solve this problem by establishing standard basic obligations and responsibilities of the carrier and shipper for goods covered under a bill of lading. These rules were amended in 1968 by the Brussels Amendments, and since they are known as the **Hague-Visby Rules**. Currently, 86 countries representing 90% of global shipping tonnage are signatories to the **Hague-Visby Rules**.
- ❖ The provisions of the **Hague Rules** have been the subject of debate ever since their inceptions, as shippers have been claiming that they are more inclined in favor of carriers. Under these **Rules**, the shippers will have to bear the cost in case of damage to cargo if they fail to prove that the ship was defective, improperly manned, or unable to safely transport and preserve the cargo. This clearly indicates that the carrier can avoid liability for damage or loss of cargo resulting from human errors if he proves that his ship is seaworthy and properly manned. The **Hague Rules** have been updated twice by protocols, but neither of them could address the basic liability provisions, which remain unchanged.
- ❖ According to **Article III** of the Hague Rules, the main duties and liabilities of the carrier are limited to Making the ship seaworthy; Properly manning, equipping, and supplying the ship; Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.
- ❖ **Article IV** further states "the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried". These provisions clearly indicate that the carrier's duties are not strict, and are limited to maintenance of a reasonable standard of professionalism and care.
- ❖ **Article IV** provides the carrier with a wide range of conditions where he can easily avoid his liability on cargo claims. The most controversial provision exempting the carrier from liability is related to negligent navigation and management of the ship. As a result, shippers have been claiming that these provisions are unfair to them and need to be amended.

**Article II: *Risks***

- ❖ Subject to the provisions of Article VI, under every contract of carriage of goods by water the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of

such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

### **Article III: Responsibilities and Liabilities**

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to
  - a) Make the ship seaworthy;
  - b) Properly man, equip and supply the ship;
  - c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.
2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.
3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things;
  - a) Leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
  - b) The number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
  - c) The apparent order and condition of the goods: Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.
4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs 3(a), (b), and (c).  
However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.
5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the

delivery by the carrier of the goods as described in the bill of lading.

- The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.
- Subject to paragraph 6bis the carrier and the ship shall, in any event, be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.
- In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault, or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

#### **Article IV: *Rights and Immunities***

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in

accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
  - Act, neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
  - Fire, unless caused by the actual fault or privity of the carrier;
  - Perils, dangers and accidents of the sea or other navigable waters;
  - Act of God;
  - Act of war;
  - Act of public enemies;
  - Arrest or restraint of princes, rulers or people, or seizure under legal process;
  - Quarantine restrictions;
  - Act or omission of the shipper or owner of the goods, his agent or representative;
  - Strikes or lock-outs or stoppage or restraint of labor from whatever cause, whether partial or general;
  - Riots and civil commotions;
  - Saving or attempting to save life or property at sea;
  - Wastage in bulk or weight or any other loss or damage arising from the inherent defect, quality, or vice of the goods;
  - Insufficiency of packing;
  - Insufficiency or inadequacy of marks;
  - Latent defects not discoverable by due diligence;
  - Any other cause arising without the actual fault and privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault nor privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.
3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.
4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.
5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become

liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of the gross weight of the goods lost or damaged, whichever is the higher.

**(b)** The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

**(c)** Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

**(d)** The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case.

❖ The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.

❖ The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:

In respect of the amount of 666.67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units; in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

**(e)** Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with the knowledge that damage would probably result.



(f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master, or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

**Article IV: *Application of Defenses and Limits of Liability***

- i. The defenses and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
- ii. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defenses and limits of liability which the carrier is entitled to invoke under these Rules.
- iii. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
- iv. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

**Article V: *Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities***

- ❖ A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.
- ❖ The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

#### **Article VI: *Special Conditions***

- ❖ Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to the seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by water, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. Any agreement so entered into shall have full legal effect.



Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

#### **Article VII: *Limitations on the Application of the Rules***

- ❖ Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by water.

#### **Article VIII: *Limitation of Liability***

- ❖ The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of vessels.

#### **Article IX: *Liability for Nuclear Damage***

- ❖ These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

#### **Article X: *Application***

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

- (a) The bill of lading is issued in a Contracting State, or
- (b) The carriage is from a port in a Contracting State, or
- (c) The contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them is to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

## v. **HAMBURG RULES**

Adopted in **March 1978** at Hamburg by the United Nations **International Convention on the Carriage of Goods by Sea**, the **Hamburg Rules** are basically an improved version of Hague-Visby rules that govern the international shipment of goods. It was an attempt to create a level playing field for developing countries in the field of international shipments of goods.

The developing countries believed that **Hague Rules** were colonial in nature and were created for the sole benefit of colonial maritime nations. They demanded a full re-examination of these Rules to address the existing imbalances between carrier and shipper interests.

The **Hamburg Rules** came into effect in November 1992 when the pre-requisite number of countries (which was twenty) ratified the Convention. As of May 2011, a total of 34 nations had ratified the convention. However, none of the developed nations including the USA, UK, and Russia have ratified the Convention yet. As a result, the **Hamburg Rules** probably cover less than 5 % of global tonnage. **Hamburg Rules** are not just amendments to the previous **Hague Rules**, but they adopted a new approach to cargo liability.

Under these new rules, the carrier will be solely responsible for any loss or damage to cargo during their transportation. To avoid penalties, they need to prove that all reasonable measures were taken to avoid damage or loss to cargo. Carrier liability is further extended to include losses due to faulty loading methods and other losses incurred by shippers such as due to delays in delivery.

**Hamburg Rules has 7 Parts divided into 34 Articles.**

### **Article 2: *Scope of application***

1. The provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if:
  - (a) The port of loading as provided for in the contract of carriage by sea is located in a Contracting State, or
  - (b) The port of discharge as provided for in the contract of carriage by sea is located in a Contracting State, or
  - (c) One of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a Contracting State, or
  - (d) The bill of lading or other document evidencing the contract of carriage by sea is issued in a Contracting State, or
  - (e) The bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.
  
2. The provisions of this Convention are applicable without regard to the nationality of the ship, the carrier, the actual carrier, the shipper, the consignee, or any other interested person.

3. The provisions of this Convention are not applicable to charter parties. However, where a bill of lading is issued pursuant to a charter party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

4. If a contract provides for the future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment. However, where a shipment is made under a charter party, the provisions of paragraph 3 of this article apply.

### **Article 3: *Interpretation of the Convention***

In the interpretation and application of the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity.

## **PART II: LIABILITY OF THE CARRIER**

### **Article 4: *Period of responsibility***

1. The responsibility of the carrier for the goods under this Convention covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage, and at the port of discharge.

2. For the purpose of paragraph 1 of this article, the carrier is deemed to be in charge of the goods

(a) From the time he has taken over the goods from:

(i) The shipper, or a person acting on his behalf; or

(ii) An authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) Until the time he has delivered the goods:

(i) By handing over the goods to the consignee; or

(ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or

(iii) By handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over.

3. In paragraphs 1 and 2 of this article, reference to the carrier or to the consignee means, in addition to the carrier or the consignee, the servants or agents, respectively of the carrier or the consignee.

### **Article 5: *Basis of liability***

1. The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage, or delay took place while the goods were in his charge as defined in the article 4 unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

3. The person entitled to make a claim for the loss of goods may treat the goods as lost if they have not been delivered as required by article 4 within 60 consecutive days following the expiry of the time for delivery according to paragraph 2 of this article.

4. The carrier is liable

(i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants, or agents;

(ii) for such loss, damage, or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants, or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyor's report shall be made available on-demand to the carrier and the claimant.

5. With respect to live animals, the carrier is not liable for loss, damage, or delay in delivery resulting from any special risks inherent in that kind of carriage. If the carrier proves that he has complied with any special instructions given to him by the shipper respecting the animals and that, in the circumstances of the case, the loss, damage, or delay in delivery could be attributed to such risks, it is presumed that the loss, damage or delay in delivery was so caused unless there is proof that all or a part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

6. The carrier is not liable, except in general average, where loss, damage, or delay in delivery resulted from measures to save life or from reasonable measures to save property at sea.

7. Where fault or neglect on the part of the carrier, his servants or agents combines with another cause to produce loss, damage, or delay in delivery the carrier is liable only to the extent that the loss, damage, or delay in delivery is attributable to such fault or neglect, provided that the carrier proves the amount of the loss, damage or delay in delivery not attributable thereto.

#### **Article 6: *Limits of liability***

- ❖ The liability of the carrier for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of the gross weight of the goods lost or damaged, whichever is the higher.
- ❖ The liability of the carrier for the delay in delivery according to the provisions of article 5 is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.
- ❖ In no case shall the aggregate liability of the carrier, under both subparagraphs (a) and (b) of this paragraph, exceed the limitation which would be established under subparagraph (a) of this paragraph for a total loss of the goods with respect to which such liability was incurred.

2. For the purpose of calculating which amount is the higher in accordance with paragraph 1(a) of this article, the following rules apply:

(a) Where a container, pallet, or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading, if issued, or otherwise in any other document evidencing the contract of carriage by sea, as packed in such article of transport are deemed packages or shipping units. Except as aforesaid the goods in such article of transport are deemed one shipping unit.

(b) In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, is considered one separate shipping unit.

3. Unit of account means the unit of account mentioned in article 26.

4. By agreement between the carrier and the shipper, limits of liability exceeding those provided for in paragraph 1 may be fixed.

**Article 7: *Application to non-contractual claims***

- ❖ The defenses and limits of liability provided for in this Convention apply in any action against the carrier in respect of loss or damage to the goods covered by the contract of carriage by sea, as well as of delay in delivery whether the action is founded in contract, in tort or otherwise.
- ❖ If such an action is brought against a servant or agent of the carrier, such servant or agent, if he proves that he acted within the scope of his employment, is entitled to avail himself of the defenses and limits of liability which the carrier is entitled to invoke under this Convention.
- ❖ Except as provided in article 8, the aggregate of the amounts recoverable from the carrier and from any persons referred to in paragraph 2 of this Article shall not exceed the limits of liability provided for in this Convention.

**Article 8: *Loss of the right to limit responsibility***

- ❖ The carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage, or delay in delivery resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay would probably result.
- ❖ Notwithstanding the provisions of paragraph 2 of article 7, a servant or agent of the carrier is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage, or delay in delivery resulted from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay, or recklessly and with the knowledge that such loss, damage or delay would probably result.

**Article 9: *Deck cargo***

- ❖ The carrier is entitled to carry the goods on deck only if such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.
- ❖ If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by the sea a statement to that effect. In the absence of such a statement, the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.
- ❖ Where the goods have been carried on deck contrary to the provisions of paragraph 1 of this article or where the carrier may not under paragraph 2 of this article invoke an agreement for carriage on deck, the carrier, notwithstanding the provisions of paragraph 1 of article 5, is liable for loss of or damage to the goods, as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability is to be determined in accordance with the provisions of article 6 or article 8 of this Convention, as the case may be.
- ❖ Carriage of goods on deck contrary to express agreement for carriage under the deck is deemed to be an act or omission of the carrier within the meaning of article 8.

**Article 10: *Liability of the carrier and the actual carrier***

- ❖ Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea to do so, the carrier nevertheless remains responsible for the entire carriage according to the provisions of this Convention. The carrier is responsible, in relation to the carriage performed by the actual carrier, for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.
- ❖ All the provisions of this Convention governing the responsibility of the carrier also apply to the responsibility of the actual carrier for the carriage performed by him. The provisions of paragraphs 2 and 3 of article 7 and of paragraph 2 of article 8 apply if an action is brought against a servant or agent of the actual carrier.
- ❖ Any special agreement under which the carrier assumes obligations not imposed by this Convention or waives rights conferred by this Convention affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed, the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.
- ❖ Where and to the extent that both the carrier and the actual carrier are liable, their liability is joint and several.
- ❖ The aggregate of the amounts recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Convention.

- ❖ Nothing in this article shall prejudice any right of recourse as between the carrier and the actual carrier.

**Article 11: *Through carriage***

- ❖ Notwithstanding the provisions of paragraph 1 of article 10, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage.
- ❖ Nevertheless, any stipulation limiting or excluding such liability is without effect if no judicial proceedings can be instituted against the actual carrier in a court competent under paragraph 1 or 2 of article 21. The burden of proving that any loss, damage, or delay in delivery has been caused by such an occurrence rests upon the carrier.
- ❖ The actual carrier is responsible in accordance with the provisions of paragraph 2 of article 10 for loss, damage, or delay in delivery caused by an occurrence that takes place while the goods are in his charge.

**PART III: LIABILITY OF THE SHIPPER**

**Article 12: *General rule***

- ❖ The shipper is not liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship unless such loss or damage was caused by the fault or neglect of the shipper, his servants, or agents. Nor is any servant or agent of the shipper liable for such loss or damage unless the loss or damage was caused by fault or neglect on his part.

**Article 13: *Special rules on dangerous goods***

- ❖ The shipper must mark or label in a suitable manner dangerous goods as dangerous.
- ❖ Where the shipper hands over dangerous goods to the carrier or an actual carrier, as the case may be, the shipper must inform him of the dangerous character of the goods and, if necessary, of the precautions to be taken. If the shipper fails to do so and such carrier or actual carrier does not otherwise have knowledge of their dangerous character: the shipper is liable to the carrier and any actual carrier for the loss resulting from the shipment of such goods, and the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
- ❖ The provisions of paragraph 2 of this article may not be invoked by any person if during the carriage he has taken the goods in his charge with knowledge of their dangerous character.
- ❖ If in cases where the provisions of paragraph 2, subparagraph (b), of this article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed, or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of article 5.



## **PART IV: TRANSPORT DOCUMENTS**

### **Article 14: *Issue of the bill of lading***

- ❖ When the carrier or the actual carrier takes the goods in his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading.
- ❖ The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.
- ❖ The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by another mechanical or electronic means, if not inconsistent with the law of the country where the bill of lading is issued.

### **Article 15: *Contents of bill of lading***

1. The bill of lading must include, inter alia, the following particulars:

- (a) the general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper;
- (b) The apparent condition of the goods;
- (c) The name and principal place of business of the carrier;
- (d) The name of the shipper;
- (e) The consignee if named by the shipper;
- (f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
- (g) The port of discharge under the contract of carriage by sea;
- (h) The number of originals of the bill of lading, if more than one;
- (i) The place of issuance of the bill of lading;
- (j) The signature of the carrier or a person acting on his behalf;
- (k) The freight to the extent payable by the consignee or other indication that freight is payable by him;
- (l) The statement referred to in paragraph 3 of article 23;
- (m) The statement, if applicable, that the goods shall or may be carried on deck;
- (n) The date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
- (o) Any increased limit or limits of liability were agreed in accordance with paragraph 4 of article 6.

2. After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under paragraph 1 of this article, must state that the goods are on board a named ship or ships, and the date or dates of loading. If the carrier has previously issued to the shipper a bill of lading or other documents of title with respect to any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a "shipped" bill of lading. The carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required to be contained in a "shipped" bill of lading.

3. The absence in the bill of lading of one or more particulars referred to in this article does not affect the legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in paragraph 7 of article 1.

**Article 16: *Bills of lading: reservations and evidentiary effect***

1. If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a "shipped" bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.

2. If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparently good condition.

3. Except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 of this article has been entered:

(a) the bill of lading is prima facie evidence of the taking over or, where a "shipped" bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and

(b) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

4. A bill of lading which does not, as provided in paragraph 1, subparagraph (k) of article 15, set forth the freight or otherwise indicate that freight is payable by the consignee or does not set forth demurrage incurred at the port of loading payable by the consignee, is prima facie evidence that no freight or such demurrage is payable by him. However, proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

**PART V: CLAIMS AND ACTIONS**

**Article 19: *Notice of loss, damage, or delay***

a. Unless notice of loss or damage, specifying the general nature of such loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is prima facie evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

b. Where the loss or damage is not apparent, the provisions of paragraph 1 of this article apply correspondingly if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.

- c. If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.
- d. In the case of any actual or apprehended loss or damage the carrier and the consignee must give all reasonable facilities to each other for inspecting and tallying the goods.
- e. No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.
- f. If the goods have been delivered by an actual carrier, any notice given under this article to him shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.
- g. Unless notice of loss or damage, specifying the general nature of the loss or damage, is given in writing by the carrier or actual carrier to the shipper not later than 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods in accordance with paragraph 2 of article 4, whichever is later, the failure to give such notice is prima facie evidence that the carrier or the actual carrier has sustained no loss or damage due to the fault or neglect of the shipper, his servants or agents.
- h. For the purpose of this article, notice is given to a person acting on the carrier's or the actual carrier's behalf, including the master or the officer in charge of the ship, or to a person acting on the shipper's behalf is deemed to have been given to the carrier, to the actual carrier or to the shipper, respectively.

**Article 20: *Limitation of actions***

- a. Any action relating to the carriage of goods under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.
- b. The limitation period commences on the day on which the carrier has delivered the goods or part thereof or, in cases where no goods have been delivered, on the last day on which the goods should have been delivered.
- c. The day on which the limitation period commences is not included in the period.
- d. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration in writing to the claimant. This period may be further extended by another declaration or declarations.
- e. An action for indemnity by a person held liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if instituted within the time allowed by the law of the State where proceedings are instituted. However, the time allowed shall not be less than 90 days commencing from the day when the person instituting such action for indemnity has settled the claim or has been served with process in the action against himself.

**Article 21: *Jurisdiction***

- ❖ In judicial proceedings relating to the carriage of goods under this Convention the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

- the principal place of business or, in the absence thereof, the habitual residence of the defendant; or
  - the place where the contract was made provided that the defendant has there a place of business, branch, or agency through which the contract was made; or
  - the port of loading or the port of discharge; or
  - any additional place designated for that purpose in the contract of carriage by sea.
  
- ❖ Notwithstanding the preceding provisions of this article, an action may be instituted in the courts of any port or place in a Contracting State at which the carrying vessel or any other vessel of the same ownership may have been arrested in accordance with applicable rules of the law of that State and of international law. However, in such a case, at the petition of the defendant, the claimant must remove the action, at his choice, to one of the jurisdictions referred to in paragraph 1 of this article for the determination of the claim, but before such removal, the defendant must furnish security sufficient to ensure payment of any judgment that may subsequently be awarded to the claimant in the action.
  
- ❖ All questions relating to the sufficiency or otherwise of the security shall be determined by the court of the port or place of the arrest.
  - No judicial proceedings relating to the carriage of goods under this Convention may be instituted in a place not specified in paragraphs 1 or 2 of this article. The provisions of this paragraph do not constitute an obstacle to the jurisdiction of the Contracting States for provisional or protective measures.
  - Where an action has been instituted in a court competent under paragraph 1 or 2 of this article or where judgment has been delivered by such a court, no new action may be started between the same parties on the same grounds unless the judgment of the court before which the first action was instituted is not enforceable in the country in which the new proceedings are instituted;
  
- ❖ For the purpose of this article the institution of measures with a view to obtaining enforcement of a judgment is not to be considered as the starting of a new action;
  
- ❖ For the purpose of this article, the removal of an action to a different court within the same country, or to a court in another country, in accordance with paragraph 2(a) of this article, is not to be considered as the starting of a new action.
  - Notwithstanding the provisions of the preceding paragraphs, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action, is effective.

## **Article 22: Arbitration**

1. Subject to the provisions of this article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.
2. Where a charter-party contains a provision that disputes arising thereunder shall be referred to arbitration and a bill of lading issued pursuant to the charter-party does not contain a special annotation providing that such provision shall be binding upon the holder of the bill of lading, the carrier may not invoke such provision as against a holder having acquired the bill of lading in good faith.
3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:
  - (a) A place in a State within whose territory is situated:
    - (i) The principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or
    - (ii) The place where the contract was made, provided that the defendant has there a place of business, branch, or agency through which the contract was made; or
    - (iii) The port of loading or the port of discharge; or
  - (b) Any place designated for that purpose in the arbitration clause or agreement.
4. The arbitrator or arbitration tribunal shall apply the rules of this Convention.
5. The provisions of paragraphs 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith is null and void.
6. Nothing in this article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

## **PART VI: SUPPLEMENTARY PROVISIONS**

### **Article 23: Contractual stipulations**

1. Any stipulation in a contract of carriage by sea, in a bill of lading, or in any other document evidencing the contract of carriage by sea is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part. A clause assigning benefit of insurance of the goods in favor of the carrier, or any similar clause, is null and void.
2. Notwithstanding the provisions of paragraph 1 of this article, a carrier may increase his responsibilities and obligations under this Convention.
3. Where a bill of lading or any other document evidencing the contract of carriage by sea is issued, it must contain a statement that the carriage is subject to the provisions of this Convention which nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee.

4. Where the claimant in respect of the goods has incurred loss as a result of a stipulation which is null and void by virtue of the present article, or as a result of the omission of the statement referred to in paragraph 3 of this article, the carrier must pay compensation to the extent required in order to give the claimant compensation in accordance with the provisions of this Convention for any loss of or damage to the goods as well as for delay in delivery.

The carrier must, in addition, pay compensation for costs incurred by the claimant for the purpose of exercising his right, provided that costs incurred in the action where the foregoing provision is invoked are to be determined in accordance with the law of the State where proceedings are instituted.

**Article 24: *General average***

1. Nothing in this Convention shall prevent the application of provisions in the contract of carriage by sea or national law regarding the adjustment of general average.

2. With the exception of article 20, the provisions of this Convention relating to the liability of the carrier for loss of or damage to the goods also determine whether the consignee may refuse contribution in general average and the liability of the carrier to indemnify the consignee in respect of any such contribution made or any salvage paid.

**Article 25: *Other conventions***

1. This Convention does not modify the rights or duties of the carrier, the actual carrier and their servants and agents, provided for in international conventions or national law relating to the limitation of liability of owners of seagoing ships.

2. The provisions of articles 21 and 22 of this Convention do not prevent the application of the mandatory provisions of any other multilateral convention already in force at the date of this Convention [March 31, 1978] relating to matters dealt with in the said articles, provided that the dispute arises exclusively between parties having their principal place of business in States members of such other convention. However, this paragraph does not affect the application of paragraph 4 of article 22 of this Convention.

3. No liability shall arise under the provisions of this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by the Additional Protocol of 28 January 1964 or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or

(b) By virtue of national law governing the liability for such damage, provided that such law is in all respects as favorable to persons who may suffer damage as either the Paris or Vienna Conventions.

4. No liability shall arise under the provisions of this Convention for any loss of or damage to or delay in delivery of luggage for which the carrier is responsible under any international convention or national law relating to the carriage of passengers and their luggage by sea.

5. Nothing contained in this Convention prevents a Contracting State from applying any other international convention which is already in force at the date of this Convention and which applies

mandatorily to contracts of carriage of goods primarily by a mode of transport other than transport by sea. This provision also applies to any subsequent revision or amendment of such an international convention.

**Article 26: *Unit of account***

- ❖ The unit of account referred to in article 6 of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be converted into the national currency of a State according to the value of such currency at the date of judgment or the date agreed upon by the parties.
- ❖ The value of a national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right of a Contracting State which is not a member of the International Monetary Fund is to be calculated in a manner determined by that State.
- ❖ Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this article may, at the time of signature, or at the time of ratification, acceptance, approval, or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as;
- ❖ 12,500 monetary units per package or other shipping unit or 37.5 monetary units per kilogram of the gross weight of the goods.
- ❖ The monetary unit referred to in paragraph 2 of this article corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency is to be made according to the law of the State concerned.
- ❖ The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 of this article is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in article 6 as is expressed there in units of account. The Contracting States must communicate to the depositary the manner of calculation pursuant to paragraph 1 of this article, or the result of the conversion mentioned in paragraph 3 of this article, as the case may be, at the time of signature or when depositing their instruments of ratification, acceptance, approval or accession, or when availing themselves of the option provided for in paragraph 2 of this article and whenever there is a change in the manner of such calculation or in the result of such conversion.

## **PART VII: FINAL CLAUSES**

### **Article 27: *Depositary***

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

### **Article 28: *Signature, ratification, acceptance, approval, accession***

- ❖ This Convention is open for signature by all States until 30 April 1979 at the Headquarters of the United Nations, New York.
- ❖ This Convention is subject to ratification, acceptance, or approval by the signatory States.
- ❖ After 30 April 1979, this Convention will be open for accession by all States which are not signatory States.
- ❖ Instruments of ratification, acceptance, approval, and accession are to be deposited with the Secretary-General of the United Nations.

### **Article 29: *Reservations***

- ❖ No reservations may be made to this Convention.

### **Article 30: *Entry into force***

- ❖ This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval, or accession.
- ❖ For each State which becomes a Contracting State to this Convention after the date of deposit of the 20th instrument of ratification, acceptance approval, or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.
- ❖ Each Contracting State shall apply the provisions of this Convention to contracts of carriage by sea concluded on or after the date of the entry into force of this Convention in respect of that State.

### **Article 31: *Denunciation of other conventions***

- ❖ Upon becoming a Contracting State to this Convention, any State party to the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (1924 Convention) must notify the Government of Belgium as the depositary of the 1924 Convention of its denunciation of the said Convention with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.
- ❖ Upon the entry into force of this Convention under paragraph 1 of article 30, the depositary of this Convention must notify the Government of Belgium as the depositary of the 1924 Convention of the date of such entry into force, and of the names of the Contracting States in respect of which the Convention has entered into force.
- ❖ The provisions of paragraphs 1 and 2 of this article apply correspondingly in respect of States parties to the Protocol signed on 23 February 1968 to amend the



International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924.

- ❖ Notwithstanding article 2 of this Convention, for the purposes of paragraph 1 of this article, a Contracting State may, if it deems it desirable, defer the denunciation of the 1924 Convention and of the 1924 Convention as modified by the 1968 Protocol for a maximum period of five years from the entry into force of this Convention. It will then notify the Government of Belgium of its intention. During this transitory period, it must apply to the Contracting States this Convention to the exclusion of any other one.

**Article 32: *Revision and amendment***

- ❖ At the request of not less than one-third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.
- ❖ Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.

**Article 33: *Revision of the limitation amounts and unit of account or monetary unit***

- ❖ Notwithstanding the provisions of article 32, a conference only for the purpose of altering the amount specified in article 6 and paragraph 2 of article 26, or of substituting either or both of the units defined in paragraphs 1 and 3 of article 26 by other units is to be convened by the depositary in accordance with paragraph 2 of this article. An alteration of the amounts shall be made only because of a significant change in their real value.
- ❖ A revision conference is to be convened by the depositary when not less than one-fourth of the Contracting States so request.
- ❖ Any decision by the conference must be taken by a two-thirds majority of the participating States. The amendment is communicated by the depositary to all the Contracting States for acceptance and to all the States signatories of the Convention for information.
- ❖ Any amendment adopted enters into force on the first day of the month following one year after its acceptance by two-thirds of the Contracting States. Acceptance is to be effected by the deposit of a formal instrument to that effect, with the depositary.
- ❖ After entry into force of an amendment a Contracting State which has accepted the amendment is entitled to apply the Convention as amended in its relations with the Contracting States which have not within six months after the adoption of the amendment notified the depositary that they are not bound by the amendment.
- ❖ Any instrument of ratification, acceptance, approval, or accession deposited after the entry into force of an amendment to this Convention, is deemed to apply to the Convention as amended.